

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 12, 2004

D043449 Sakry v. Superior Court of San Diego County/People

Let a writ issue directing the superior court to vacate that portion of the judgment imposing restitution fines under sections 1202.4, subdivision (b), and 1202.45, appoint counsel for Sakry, conduct a new hearing on the fines and enter a new order after after hearing. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron
Clerk: D. E. Moore

D040310 Alberts et al. v. Franklin et al.

Cause called on merits. J. David Franklin, Esq. argued for appellant/cross-respondent. David J. Noonan, Esq. argued for respondent/x-appellant. Mr. Franklin replied. Cause submitted.

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D042510 Petrosian v. Connor

Cause called on merits. Mark Howard Boykin, Esq. argued for appellant. George M. Wallace, Esq. argued for respondent. Mr. Boykin replied. Cause submitted.

Court recessed at 10:25 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares
Clerk: D. E. Moore

D042305 People v. Villalpando

Cause called on merits. Eric Larson, Esq. argued for appellant. Kristen Chenelia, a volunteer attorney, being supervised by Daniel Rogers, Deputy Attorney General argued for respondent. Mr. Larson replied. Cause submitted.

D041317 People v. DiMaggio

Cause called on merits. Alison Adams, Esq. argued for appellant. Marvin E. Mizell, Deputy Attorney General argued for respondent. Ms. Adams replied. Cause submitted.

Court recessed at 2:01 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 12, 2004 (Continued)

D041829 Carver et al. v. Chevron U.S.A., Inc.

Cause called on merits. David M. Logan, Esq. argued for appellant. Karl N. Haws, Esq. argued for respondent. Mr. Logan replied. Cause submitted.

Court recessed at 2:40 p.m. until Tuesday, April 13, 2004 at 9 a.m.

D043804 In re Morales on Habeas Corpus

The petition is denied.

D041669 Burk et al. v. Llorente

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

D042086 Jones et al. v. City of San Diego et al.

The judgment is reversed and remanded with directions to consider Jones's claims that the Commission's findings of misconduct that took place on October 27, 1999, February 10, 2000, February 17, 2000, March 7, 2000, and March 22, 2000 were not supported by the weight of the evidence and the Commission abused its discretion in imposing a nine-month suspension. Jones and San Diego Police Officers Association to bear costs on appeal. Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D042175 In re the Conservatorship of Martha P.

The judgment is affirmed. Each party shall bear her own costs on appeal. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D043096 Chatzky and Associates et al. v. Superior Court of San Diego County/Bank of America Corporation

The petition is denied. Our temporary stay of the proceedings is vacated. The Bank is entitled to costs in this writ proceeding. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D043138 People v. Franklin

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D043536 Dickson et al. v. Mosbey, Jr. et al.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2004

D041775 People v. Pitts

The opinion filed March 22, 2004 is ordered certified for publication.

D042173 People v. Wansley, Jr.

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D042103 Doll v. J.C. Penney Company, Inc.

The judgment is affirmed. The parties are to bear their own costs on appeal. Irion, J.; We Concur: Nares, Acting P.J., McDonald, J.

D042735 People v. Kosinski

The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., Aaron, J.

D042051 People v. Chacon

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D043980 Navarrete v. Superior Court of San Diego County/People

The petition is denied.

D043183 In re C.D., a Juvenile

The judgment terminating parental rights is reversed. The court is directed to ensure that proper notice is given under the ICWA. If, after receiving notice, no tribe intervenes, the juvenile court shall reinstate the judgment. (See *Dwayne P. v. Superior Court, supra*, 103 Cal.App.4th at p. 261.) Irion, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D043935 Campo Band of Mission Indians v. Superior Court of San Diego County/Ultra Properties

The petition is denied.

D044009 In re Dunn on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Terry O'Rourke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. E. Moore

D041297 People v. Scatolini

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. A. Natasha Cortina, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members:
The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2004 (Continued)

D042677 Victoria Viruet-Rivera v. Trustees of the California State University
Cause called on merits. Kenneth W. Baisch, Esq. argued for appellant. Kathleen M. Megli, Deputy Attorney General argued for respondent. Mr. Baisch replied. Cause submitted.

D041792 Fago et al. v. Knott
Cause called on merits. Thomas Merrett Christy, Esq. argued for appellant. Grant G. Teeple, Esq. argued for respondent. Mr. Christy replied. Cause submitted.

D042303 L & B Contract Industries West v. County of Riverside
Cause called on merits. William C. Tayler, Esq. argued for appellant/cross-respondent. Henry E. Heater, Esq. argued for respondent/cross-appellant. Mr. Tayler replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald
Clerk: D. E. Moore

D041677 Lanier v. Mills et al.
Cause called on merits. David W. Lanier, argued for appellant in pro per. Howard A. Kipnis, Esq. argued for respondent, Wells Fargo Bank. Mr. Lanier replied. Cause submitted.

Court recessed at 1:52 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D041961 People v. Nourn
Cause called on merits. Stephen Gilbert, Esq. argued for appellant. Niki Shaffer, Deputy Attorney General argued for respondent. Mr. Gilbert replied. Cause submitted.

Court recessed at 2:20 p.m. to change panel members. New panel members:
The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D042989 In re Taylor K., a Juvenile
Cause called on merits. Mary Woodward Wells, Esq. argued for appellant. Felicity Senoski, Deputy Attorney General argued for respondent. Ms. Wells replied. Cause submitted.

D042965 Campbell Industries v. San Diego Unified Port District et al.
Cause called on merits. David J. Noonan, Esq. was present in oral argument for appellant. Diana Casey, Esq. was present in oral argument for respondent. Cause to be recalendared for oral argument in May.

Court recessed at 3:20 p.m. until Wednesday, April 14, 2004 at 9 a.m.

D044008 In re Davis on Habeas Corpus
The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 13, 2004 (Continued)

D044007 In re Higgins on Habeas Corpus

The petition is denied without prejudice to refiling after consideration by the superior court.

D043977 Wells Fargo Bank et al. v. Superior Court of San Diego County/Smith

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 14, 2004

D041210 National Environmental Waste Corporation v. County of San Diego

The judgment is affirmed. Respondent is entitled to costs on appeal. Aaron, J.; We Concur:
McConnell, P.J., Benke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate
Justices Judith Haller and Terry O'Rourke

Clerk: D. E. Moore

D041855 People v. Prescott

Cause called on merits. Jeffrey A. Needelman, Esq. argued for appellant. Maxine Cutler, Deputy
Attorney General argued for respondent. Cause submitted.

D042088 People v. Johnson

Cause called on merits. George L. Schraer, Esq. argued for appellant. Tammy Hennick, Deputy Attorney
General argued for respondent. Cause submitted.

Court recessed at 9:24 a.m. to change panel members. New panel members: The Honorable Gilbert Nares,
Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D043024) Citizens for Improved Sorrento Access, Inc., et al. v. City of San Diego et al.

D043187) Citizens for Improved Sorrento Access, inc., et al. v. City of San Diego et al.

Cause called on merits. Richard A. Schulman, Esq. argued for appellant. William S. Donnell, Deputy
City Attorney argued for respondent. Mr. Schulman replied. Cause submitted.

Court recessed at 9:54 a.m. to change panel members. New panel members: The Honorable Judith Haller,
Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D041115 In re Marriage of Moeller

Cause called on merits. Candace M. Carroll, Esq. argued for appellant/cross-respondent.
Stephen Temko, Esq. argued for respondent/cross-appellant. Ms. Carroll replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices
Alex McDonald and James McIntyre

Clerk: D. E. Moore

D040517 Kilgore et al. v. Rancho Carlsbad Partners et al.

Cause called on merits. Elvi J. Olesen, Esq. argued for appellant. Todd R. Gabriel, Esq. argued for
respondent, Rancho Carlsbad Partners. Scott J. Loeding, Esq. argued for respondent, Rancho Carlsbad
Owners Association, Inc. Ms. Olesen replied. Cause submitted.

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 14, 2004 (Continued)

D041620 Linda Araiza-Klier v. Teachers Insurance and Annuity Association et al.

Cause called on merits. David Baumgarten, Esq. argued for respondent. Kathleen Cahill, Esq. argued for appellant, Teachers Insurance and Annuity Association. Margaret Byrne, Esq. was present in oral argument for appellant, but did not argue. Cause submitted.

Court recessed at 2:10 p.m. to change panel members. New panel members:
The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices
Patricia Benke and James McIntyre

D041762 People v. Hightower

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. Taylor Nguyen, Deputy Attorney General argued for respondent. Mr. Babcock replied. Cause submitted.

D042212 Miramontes v. Preciado et al.

Cause called on merits. Charles Bird, Esq. argued for appellant. Duane E. Sceper, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 3:20 p.m. until Thursday, April 15, 2004 at 9:00 a.m.

D043679 In re Giovana H., a Juvenile

The appeal is dismissed. Huffman, Acting P.J.; We Concur: Haller, J., McDonald, J.

D041856 People v. Lima

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., McIntyre, J.

D041448 People v. Gross

The judgment is modified to stay the sentences imposed for counts 1 and 5 under Penal Code section 654. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the modification and forward a copy of the amended abstract to the Department of Corrections. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D044050 Gutierrez v. Superior Court of San Diego County/Frager et al.

The petition is denied.

D040402 M & H Realty Partners IV L.P. v. Zora et al.

The petition for rehearing is denied.

D043048 In re Richard C., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Aaron, J.

D041908 People v. Munger

The judgment is affirmed. Nares, Acting P.J.; I Concur: McIntyre, J.;
Dissenting by Opinion: McDonald, J.

D044067 In re Walker on Habeas Corpus

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 15, 2004

D043368 In re Christopher B. et al., a Juvenile

The orders dated November 19, 2003 and the judgments dated December 3, 2003 terminating parental rights to Michael and Christopher are reversed. This matter is remanded to the juvenile court for that court to direct the Agency to provide notice to the BIA and the Penobscot tribe of the proceedings. If, after receiving notice, the tribe does not intervene, the juvenile court shall reinstate its orders and judgments. (*Dwayne P. v. Superior Court, supra*, 103 Cal.App.4th at p. 261.) The remittitur is to issue forthwith. (Cal. Rules of Court, rule 26(c), (d)(1).) O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D043869 Daniel V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Daniel V. has notified the court on behalf of the petitioner that the father does not wish to pursue a writ petition and a Petition for Writ of Mandate under Rule 39.1B will not be filed. The case is dismissed.

D042052 Murray v. La Jolla Inns of American Property Company

Appellant's petition for rehearing is denied. Respondent's request for publication is denied.

D042020 People v. Duntley

The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D042304 People v. Portis

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D042144 Winter v. Denome

The matter is remanded to the superior court with directions to: (1) vacate the portion of its March 14, 2003 order denying Denome's section 425.16 motion to strike the fifth cause of action of Winter's complaint (intentional infliction of emotional distress claim); and (2) grant Denome's section 425.16 motion with respect to the fifth cause of action. The parties to bear their own costs on appeal. Haller, J.; We Concur: Huffman, Acting P.J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: D. E. Moore

D041738 Fitz v. NCR Corporation

Cause called on merits. Karin Dougan Vogel, Esq. argued for appellant. Leon J. Saad, Esq. argued for respondent. Ms. Vogel replied. Cause submitted.

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 15, 2004

D042575 Vasquez v. Residential Investments, Inc., et al.

Cause called on merits. Anton Gerschler, Esq. argued for appellant. Kathryn Albarian, Esq. argued for respondent. Mr. Gerschler replied. Cause submitted.

D041673 People v. Johnson

Cause called on merits. Mark Christiansen, Esq. argued for appellant. Warren Robinson, Deputy Attorney General argued for respondent. Mr. Christiansen replied. Cause submitted.

D041526 Rutherford v. Husain

Cause called on merits. Steven Ramon Napoles, Esq. argued for appellant. Priscella F. Slocum, Esq. argued for respondent. Mr. Napoles replied. Cause submitted.

Court recessed at 10:45 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

Clerk: D. E. Moore

D041529 People v. Whitlow

Cause called on merits. Kathy M. Chavez, Esq. argued for appellant. Steve Oetting, Deputy Attorney General argued for respondent. Ms. Chavez replied. Cause submitted.

Court recessed at 2:02 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D040425 People v. Jordan

Cause called on merits. Carl Fabian, Esq. argued for appellant. Hector Jimenez, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 2:19 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D041421 Traditional Cat Association, Inc., et al. v. Gilbreath et al.

Cause called on merits. Jim Peterson, Esq. argued for respondent. Darren J. Quinn, Esq. argued for appellant. Mr. Peterson replied. Cause submitted.

D041918 City of San Diego et al. v. Badiei

Cause called on merits. Kelly Quinn, Esq. argued for amicus appellant. Simon Silva, Deputy City Attorney argued for respondent. Ms. Quinn replied. Cause submitted.

Court recessed at 3:18 p.m. until Friday, April 15, 2004 at 9 a.m.

D043789 In re Torres on Habeas Corpus

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 15, 2004 (continued)

D043925 Leslie S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Leslie S. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D043176 In re Aaliyah H., a Juvenile

Upon written stipulation filed by the parties to the appeals, the appeals are dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2004

D042305 People v. Villalpando

The judgment is affirmed. The matter is remanded so the trial court can correct the abstract of judgment as mentioned above, and forward a corrected copy of the abstract of judgment to the Department of Corrections. Benke, J.; We Concur: McConnell, P.J., Nares, J.

D041855 People v. Prescott

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D043078 Assam v. Atvara et al.

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D042067 Mathews v. Regalado

The judgment is affirmed. Mathews is entitled to costs on appeal. McDonald, J.; We Concur: Nares, Acting P.J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre
Clerk: D. E. Moore

D041948 Bell v. Vista Unified School District

Cause called on merits. Robert P. Otilie, Esq. argued for respondent/cross-appellant. Paul Vincent Carelli, Esq. argued for appellant/cross-respondent. Mr. Otilie replied. Mr. Carelli replied. Cause submitted.

Court recessed at 9:21 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D042180 Drake v. Paradise Valley Hospital

Cause called on merits. George W. Korte, Esq. argued for appellant. Michael Bishop, Esq. argued for respondent. Mr. Korte replied. Cause submitted.

Court adjourned at 9:39 a.m.

Shannon R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

By failing to file a timely petition for writ relief, the notice of intent is deemed to be abandoned. The case is dismissed.

D044071 St. George v. Superior Court of San Diego County/People

The petition for writ of prohibition has been read and considered by Justices Benke, Haller and O'Rourke. The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
April 16, 2004 (continued)

D044122 De La Fuente v. Superior Court of San Diego County/People

The petition for writ of prohibition has been read and considered by Justices Benke, Haller and O'Rourke. The petition is denied.

D044073 In re Brown on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Benke, Haller and O'Rourke. The petition is denied without prejudice.

D041194 Hackman et al. v. American Medical Response et al.

The judgment is reversed. Plaintiff are entitled to costs on appeal. McDonald, J., I Concur: Haller, J., I Concur with the Result: Benke, Acting P.J.

D043724 Desiree V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. O'Rourke, J.; We Concur: Benke, Acting P.J., Aaron, J.

D044126 In re Consiglio on Habeas Corpus

The petition is denied without prejudice to refile in the proper court.

D043175 In re N.K., a Juvenile

The order is affirmed. Nares, J.; We Concur: Huffman, Acting, P.J., Irion, J.

D044128 Save Our Heritage Organization (SOHO) v. Superior Court of San Diego County/San Diego Unified Port District et al.

The petition is denied.